

In the Matter of License No. 189353 and all other Seaman Documents
Issued to: EDMUND F. MULLINS

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1039

EDMUND F. MULLINS

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations Sec. 137.11-1.

By order dated 13 December 1957, an Examiner of the United States Coast Guard at San Francisco, California, revoked Appellant's seaman documents upon finding him guilty of misconduct. Seven specifications allege that while serving as Junior Third Assistant Engineer on board the American SS MORMACREY under authority of the document above described, Appellant wrongfully absented himself from his vessel and wrongfully failed to perform his duties on 9 September 1957, wrongfully failed to perform his duties on 10 September 1957, willfully disobeyed the lawful order of a superior on 10 September 1957, wrongfully failed to join his vessel on 10 September 1957, wrongfully failed to perform his duties on 16 and 17 September 1957, wrongfully disobeyed the Master's orders on 18 September 1957, and wrongfully failed to join his vessel on 6 October 1957.

At the beginning of the hearing, Appellant was given a full explanation of the nature of the proceedings, the rights to which he was entitled and the possible results of the hearing. Although advised of his right to be represented by counsel of his own choice, Appellant elected to waive that right and act as his own counsel. He entered a plea of guilty to specifications 1 and 2 and not guilty to all other specifications.

The Investigating Officer made his opening statements and introduced in evidence excerpts from the Shipping Articles and entries in the Official Logbook of the vessel in order to prove all seven specifications. He then rested. Appellant testified under oath in his own defense and was cross-examined by the Investigating Officer. The Investigating Officer had the Master of the MORMACREY testify in rebuttal to the Appellant's testimony. The Appellant cross-examined and then both parties made a final argument.

At the conclusion of the hearing, the oral arguments of the Investigating Officer and Appellant were heard and both parties

were given an opportunity to submit proposed findings and conclusions. The Examiner then announced the decision in which he concluded that the charge and the first six specifications had been proved. An order was entered revoking all documents issued to Appellant.

The decision was served on 18 December 1957. Appeal was timely filed on 26 December 1957.

FINDINGS OF FACT

Between 9 September and 10 October 1957, inclusive, Appellant was serving as Junior Third Assistant Engineer on board the American SS MORMACREY and acting under authority of his License No. 189353 while the ship was on a foreign voyage.

The MORMACREY was in the port of Rio de Janeiro on 9 September and on 10 September until 1800.

On 9 September 1957 Appellant wrongfully failed to perform his regularly assigned duties from 0800-1200 and 1300-1700 and was wrongfully absent from his ship for the entire day.

On 10 September 1957 Appellant wrongfully failed to perform his regularly assigned duties from 0800-1200 and 1300-1700.

On 10 September 1957, Appellant failed to obey the lawful order of his superior, the chief mate of the vessel, to stay aboard the vessel until it sailed at 1800 by going ashore at 1740.

On 10 September 1957 Appellant wrongfully failed to join his ship when it sailed from Rio de Janeiro.

The MORMACREY was in port of Santos, Brazil on 16-18 September 1957.

On 16 and 17 September 1957 Appellant wrongfully failed to perform his regularly assigned duties from 0800-1200 and 1300-1700.

On 18 September 1957 Appellant disobeyed the lawful order of the Master to remain on board while the ship was in Santos by going ashore at 1930.

Appellant's prior record during fourteen years at sea consists of a three-month suspension for absence without leave and failure to join in 1943, two months' suspension with nine months' probation for failure to perform duties in 1945, one year's suspension for absence over leave in 1945, six months' suspension for failure to join and delaying sailing in 1951, and three months' suspension

with one year's probation for failing to join and absence without leave in 1953.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. Appellant now desires a new hearing with representation by counsel. He challenges all exhibits as incompetent evidence and the testimony of the Master as uncorroborated. He objects to consideration of his prior record. He objects to the lack of expert medical testimony on his physical condition and charges that all evidence indicating that he was suffering from acute alcoholism is false. He contends that the Examiner committed an error in judgment in giving weight to his failure to reply when the logbook entries were read to him by the Master. For these reasons Appellant requests the return of his license and a revision of the decision.

OPINION

Appellant was afforded full opportunity to retain counsel during the course of the hearing but he did not avail himself of this opportunity.

The originals of the logbook and the Shipping Articles were properly introduced in evidence without objection. The testimony of the Master is fully corroborated by this competent documentary action. Appellant had every opportunity to challenge the admissibility of the writings and to rebut any of the government's proof, and he did cross-examine the Master extensively.

In determining the proper disposition of the case, consideration of Appellant's prior record was essential. The fact that in this case it acted as matter in aggravation and not in mitigation makes it no less competent and relevant for the purpose of arriving at a just decision.

The Master was well qualified to give a layman's opinion that on certain occasions the Appellant appeared intoxicated. Appellant had every opportunity to rebut this evidence with testimony of medical doctors. He did not at any time offer to do so. From the evidence adduced it was apparent that his course of conduct was that of an alcoholic and not of a person administering self-medication for liver trouble and dysentery. His self-serving statements were not enough, standing alone, to place on the Examiner any duty to pursue the medical aspects of this case any further.

Considering Appellant's long years of experience in the

Merchant Marine and his status as a ship's officer, the Examiner was well justified in concluding that it would be reasonable to expect him to make some rebuttal when "logged" rather than remain silent.

The case established by the government is strong. The rebuttal by the Appellant is self-contradictory, self-serving and uncorroborated. The record clearly supports proof of specifications one through six. In view of this man's prior record and his position as a ship's officer the order imposed is considered appropriate. Appellant has showed an ever increasing disregard for the obligations he incurs in signing shipping articles and the added responsibilities he assumes when sailing as an officer.

ORDER

The order of the Examiner dated at San Francisco, California, on 13 December 1957 is AFFIRMED.

J. A. Hirshfield
Rear Admiral, United States Coast Guard
Acting Commandant

Dated at Washington, D. C., this 23rd day of May 1958.